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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No.6090 OF 2005

PETITIONER Kripal Singh S/o Shri B.S. Singh
Aged about 34 years,
Resident of Near Kali mandir Tifra
Tahsil and District Bilaspur (CG)

Versus

RESPONDENTS

1. Cent Bank, through its Branch Manager, Home Finance Limited (Subsidiary Central Bank of India) Surya Bhawan, Juna Bilaspur, Chhattisgarh
2. Cent Bank, Home Finance Limited Through its Managing Director, Bhopal, 9 Area Hills, Jail Road, Bhopal
3. The Collector, Bilaspur Distt. – Bilaspur (C.G.)
4. Sub Divisional Magistrate Bilaspur (C.G.)
5. Tasildar Bilaspur Distt. Bilaspur (C.G.)

Present: Shri Awadh Tripathi, learned counsel for the petitioner.

ORAL ORDER
(Passed on 21st February, 2006)

The petitioner claims to be the purchaser of two flats, flat No.204 and flat No.205, of Wallice James Apartment situate behind Tripur Auto in Bilaspur city, having purchased the same from M/s. R.S. Chouhan and T.R. Baghel. It is stated that the vendors of the petitioners had borrowed loan of Rupees Three lacs each from Oriental Bank of Commerce, Bilaspur Branch in the year 2002 to purchase the said flats and they promptly cleared the loan amount. When the matter stood thus, according to the petitioner, the management of the Cent Bank, Home Finance Limited, the second respondent herein, has issued notice under Section

13 of the Securitisation Act (for short 'the Act') in the name of M/s. Balram Orawan and Peter Tirki, and on 27/08/2005 the officers of the second respondent Bank broke open the lock of the flats and put their own locks. It is alleged that M/s. Balram Orawan and Peter Tirki are shown to be the borrowers of certain loans from the second respondent Bank mortgaging flat No.204 and flat No.205. According to the petitioner, the said two persons have absolutely nothing to do with flat No.204 and flat no.205 and they have no any subsisting interest or right in the properties and, therefore, the second respondent Bank has acted illegally in taking steps to attach and auction flat no.204 and flat No.205.

(2) The facts stated supra speak for themselves. There is a serious dispute between the contesting parties with regard to the title over the two flats. The question whether the petitioner is the absolute owner and occupier of flat No.204 and flat No.205 or the said Balram Oraon and Peter Tirki have borrowed the loan from the second respondent Bank and whether they have any existing legal right and interest in the subject properties are all questions of facts which could be resolved only after due trial before the jurisdictional civil Court after permitting the parties to lead evidence and tendering the witnesses of each party for cross-examination by other party. The dispute brought before the Court bristles with many contentious factual issues and they cannot be resolved in a summary proceeding under Article 226 of the Constitution. In that view of the matter, I decline to entertain this writ petition, however, leaving open all the contentions raised in the writ petition to be agitated before the jurisdictional civil Court. The writ petition is, therefore, dismissed,

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reserving liberty to the petitioner to work out legal remedies before the jurisdictional civil Court.

Sd/-
Chief Justice

Brajesh